

EXHIBIT A

Exhibit “A,” Joint Claim Construction of U.S. Patent No. 5,769,166

U.S. Patent No. 6,169,979 Claim Terms (Claim Nos.)	Agree	Disagree	Plaintiff’s Proposed Construction and Intrinsic and Extrinsic Evidence	Defendant’s Proposed Claim Construction and Intrinsic and Extrinsic Evidence
“customer” (1,5,6,24,27,28)		X	<p>The term “customer” requires no construction. The term “customer” should receive its plain and ordinary meaning.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing context for any testimony cited by GE.</p>	<p>A purchaser of energy from the utility company.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Abstract ’979 patent Fig. 4 ’979 patent Table 2 ’979 patent Appendices A-B, E, G ’979 patent col. 1 lines 35-37, 38-41, 47-51, 66-col. 2 line 1 ’979 patent col. 2 lines 1, 7-8, 40-46 ’979 patent col. 3 lines 6-11, 23-24 ’979 patent col. 5 lines 30-40 ’979 patent col. 9 lines 36-61 ’979 patent col. 16 lines 23-44 ’979 patent col. 20 lines 25-27, 30-33 ’979 patent col. 25 lines 61-67 ’979 patent col. 26 lines 25-26, 46-49 ’979 patent col. 27 lines 12-26</p> <p>Prosecution history of ‘979 Patent: Amendment in response to Office Action (Oct. 4, 1999) at 3-5 Keith Wieteki deposition transcript: 50:16-51:5; 88:16-</p>

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				<p>89:10; 97:3-5</p> <p>Robert Schulte deposition transcript: 33:24-34:10; 36:5-12; 43:3-44:1; 49:22-50:8; 73:15-74:3; 90:21-91:10; 91:13-92:6</p> <p>Jerome Johnson deposition transcript: 46:10-19, 227:24-228:19, 236:3-237:21</p>
“utility rates” (1,24,27)		X	<p>The phrase “utility rates” requires no construction. The phrase “utility rates” should receive its plain and ordinary meaning.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing</p>	<p>Plan that establishes prices the customer pays the utility per unit of energy.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Abstract ’979 patent Fig. 3 ’979 patent Appendices A-B, E, G ’979 patent col. 3 lines 53-54 ’979 patent col. 4 lines 42-45 ’979 patent col. 18 lines 31-33 ’979 patent col. 25 lines 61-67 ’979 patent col. 26 lines 15-54 <u>’979 patent col. 27 lines 1-40</u></p> <p>Prosecution history of ’979 Patent: Amendment in response to Office Action (Oct. 4, 1999) at 4-5</p>

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			context for any testimony cited by GE.	Keith Wietecki deposition transcript: 33:14-16; 47:20-48:4 Robert Schulte deposition transcript: 38:16-39:1
“utility cost savings programs” (1,24,27)		X	<p>The phrase “utility cost savings programs” requires no construction. The phrase “utility cost savings programs” should receive its plain and ordinary meaning.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing context for any testimony cited by GE.</p>	<p>Programs offered by the utility, for assisting with the sale of utility products and services, requiring the customer to install energy efficient equipment in return for a rebate from the utility.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Fig. 3 ’979 patent Appendices A-B ’979 patent col. 1 lines 42-47 ’979 patent col. 2 lines 50-51 ’979 patent col. 5 lines 3-20 ’979 patent col. 20 lines 39-53, 55-58 ’979 patent col. 21 lines 7-9 ’979 patent col. 22 lines 4-12, 15-17 ’979 patent col. 23 lines 46-48 ’979 patent col. 29 lines 14-17 ’979 patent col. 31 lines 58-61</p> <p>Prosecution history of ’979 Patent:</p>

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				Amendment in response to Office Action (Oct. 4, 1999) at 4-5 Keith Wietecki deposition transcript: 89:11-92:24; 99:18-23 Robert Schulte deposition transcript: 54:16-61:4
“select,” “selecting,” or “selected” (1,24, 27)		X	<p>The terms “select,” “selecting” and “selected” require no construction. The terms “select,” “selecting” and “selected” should receive their plain and ordinary meanings.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing</p>	<p>choose for recommendation; choosing for recommendation.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Abstract ’979 patent Fig. 4 ’979 patent Table 2 ’979 patent Appendices A-B ’979 patent col. 6 lines 48-57 ’979 patent col. 7 lines 11-15 ’979 patent col. 9 lines 36-38 ’979 patent col. 14 lines 24-29 ’979 patent col. 26 lines 25-28</p> <p>Prosecution history of ’979 Patent: Amendment in response to Office Action (Oct. 4, 1999) at 4-5 Keith Wietecki deposition transcript: 152:11-153:13 Robert Schulte deposition</p>

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			context for any testimony cited by GE.	transcript: 93:1-94:22 Jerome Johnson deposition transcript: 46:10-19, 75:1-8, 76:14-25, 77:8-13, 227:24- 228:19,
“report” (1,2,24,25,27)		X	<p>The term “report” requires no construction. The term “report” should receive its plain and ordinary meaning.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing context for any testimony cited by GE.</p>	<p>Proposal from the utility to a customer.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Abstract ’979 patent Fig. 4 ’979 patent Table 2 ’979 patent Appendices A-B ’979 patent col. 1 line 19-20, 38-41, 48-50, 59-60, 66-67 ’979 patent col. 2 lines 40-43, 51-52 ’979 patent col. 3 lines 4-24, 57-59 ’979 patent col. 5 lines 41-60 ’979 patent col. 9 lines 36-38 ’979 patent col. 14 lines 24-27 ’979 patent col. 17 lines 21-48</p> <p>Prosecution history of ’979 Patent: Amendment in response to Office Action (Oct. 4, 1999) at 3-5 Keith Wieteki deposition transcript: 121:24-122:18,</p>

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				169:6-14 Robert Schulte deposition transcript: 95:15-20, 99-7-21 Jerome Johnson deposition transcript: 46:10-19, 46:23- 47:1, 75:1-8, 76:14-16, 77:8-13, 129:18-131:18, 136:22-137:6, 227:24-228:19,
“utility” (1,5,6,24,27,28)		X	<p>The term “utility” requires no construction. The term “utility” should receive its plain and ordinary meaning.</p> <p>The American Heritage Dictionary, 2d College Ed. (1982).</p> <p>The New Merriam-Webster Dictionary (1989).</p> <p>Random House Webster’s Dictionary (1993).</p> <p>EMS does not presently know of deposition testimony that it intends to rely on to oppose GE’s proposed construction. EMS reserves the right to cite deposition testimony for the purpose of clarifying or providing context for any testimony cited by GE.</p>	<p>A company that generates, sells, and distributes energy to customers.</p> <p><u>Intrinsic and Extrinsic Evidence</u></p> <p>’979 patent Abstract ’979 patent col. 1 lines 23-26, 34-37, 65-67 ’979 patent col. 2 lines 7-8, 40-43, 54-57 ’979 patent col. 16 lines 23-44</p> <p>Prosecution history of ‘979 Patent: Amendment in response to Office Action (Oct. 4, 1999) at 4-5</p> <p>Keith Wieteki deposition transcript: 35:8-11 Robert Schulte deposition transcript: 14:9-17, 15:9-12 Jerome Johnson deposition</p>

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				transcript: 46:10-19, 236:3- 237:21